

### **REMARKS**

Claims 1-12, 18-20, and 25-26 are pending in the patent application. Claims 13-17 and 21-24 have been canceled without prejudice or disclaimer. Claims 1-2, 11-12 and 18-20 have been amended. New claims 25-26 have been added. No new matter has been added.

The substance of these claims has been discussed in a brief interview held on 14 Oct 04. The reference of record, namely Pralus et al, Merttuek, and Beutler et al were discussed and it was pointed out how the claims are distinguishable thereover. In brief, with respect to claims 1, 12, 25 and 26, it is clear that the key reference, Pralus, is a substantially different structure in that it is not an ear-wearable headset, but a headset with a band and that in its folded position, it clearly does not contain the microphone arm within the outer periphery of the housing to which the present invention pertains. Nevertheless, to further distinguish this reference, the movement of the pivoting arm is defined in such a way that it cannot be found in Pralus nor can one find a teaching in Pralus which would suggest such a different construction. With respect to claim 18, the sensor responsive element is completely lacking in the prior art. The dependent claims further define features not found in the prior art as mentioned in the interview.

### CONCLUSION

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. The amendments clarify the patentable invention without adding new subject matter. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

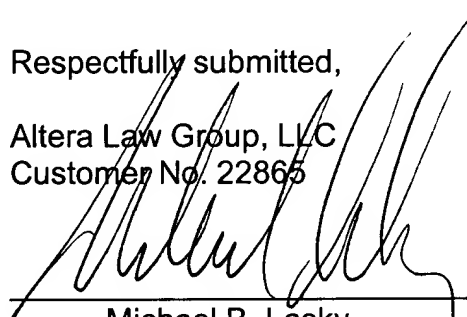
If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,

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